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Letter dated 24 April 2006 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached third report from Samoa submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Adamantios Th. **Vassilakis**
Acting Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 13 April 2006 from the Chargé d'affaires a.i. of the Permanent Mission of Samoa to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On instructions from my Government, I have the honour to enclose herewith the supplementary report from Samoa to the Counter-Terrorism Committee pursuant to your predecessor's letter of 26 March 2004 requesting additional information on national implementation of paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

The Government of Samoa stands ready to provide any further information as may be requested by the Committee.

(*Signed*) Perina Jacqueline **Sila**
Chargé d'affaires a.i.

Enclosure

Report of Samoa
on actions taken by the Government to implement
Security Council resolution 1373 (2001)

Introduction

Since its last report to the Counter-Terrorism Committee in August 2003 the Government of Samoa has continued to place a very high priority on its commitment and participation in domestic, regional and international initiatives to combat terrorism and related activities. This commitment included Samoa's active participation (at both Ministerial and official levels) in the work of the Pacific Islands Forum (particularly its Regional Security Committee), the Asia Pacific Group on Money-Laundering, and other relevant international law enforcement and security related bodies.

At a legislative and operational level Samoa has enacted comprehensive frameworks criminalising terrorist related activity, and has continued to develop its border security systems, intelligence gathering and coordination capabilities, as well as participation in regional security training exercises.

Legislative measures

In April 2002 the *Prevention and Suppression of Terrorism Act 2002* (PSTA) was passed. This is the primary legislative vehicle by which Samoa implements its international counter-terrorism obligations. Key elements of the Act are:

- It is an offence, punishable by 5 to 15 years to finance or assist in the financing of terrorist acts;
- The Attorney General may apply to the Supreme Court for the freezing of funds and assets that are collected, or are suspected of being collected for the purpose of committing or financing terrorist acts;
- The creation of new criminal extra-territorial offences relating to terrorist bombings, hostage- taking, internationally protected persons, attacks on airports, aircraft and ships, and fast tracked regimes for the arrest and extradition of suspected terrorists.

Since its commencement no cases have been identified requiring prosecution for offences contained in the Act.

The *PSTA* together with the *Money Laundering Prevention Act 2000* (MLPA) comprises Samoa's legislative framework for the detection, reporting and prosecution of money laundering and terrorist financing. The Government of Samoa considers that this

legislation meets current international standards set by the Financial Action Task Force (FATF), including compliance with related UNSCR 1373 requirements.

Samoa was evaluated on its compliance with the FATF standards by the Asia Pacific Group on Money Laundering, a FATF Style Regional Body in February 2006. A report containing the findings and recommendations of the evaluators is expected to be available in May 2006. The Government will then consider the adoption of any changes recommended by the evaluators in their report.

In 2000, a minor but significant amendment was made to the MLPA extending the duration of freezing orders granted by the Supreme Court from 7 days to 180 days. This change was considered necessary to reduce the risk of assets frozen by the Samoan government being lost in the event of delays in foreign authorities initiating related proceedings.

In addition, the government plans to introduce into Parliament in 2006 a suite of legislation, including amendments to the MLPA, PSTA, *Extradition Act 1974*. These amendments are aimed at enhancing the effectiveness of mechanisms by which Samoan authorities provide international co-operation on the investigation and prosecution of terrorist and money-laundering activity, and to ensure that there is complete coverage of freezing and forfeiture regimes.

In addition, officials are currently assessing whether there is a need to amend other relevant legislation to meet changing trends and risks in the security and crime environment - for example the current definition of the terms "arms" and "weapon" in the *Arms Ordinance 1960* and *Police Offences Ordinance 1961*.

Executive Action

The Department of Prime Minister plays an integral role in the coordination of domestic initiatives on security related issues. Ministers and officials represent Samoa at a wide range of regional and international fora, particularly the Pacific Islands Forum and its security related committees.

Operative paragraph 1

The government of Samoa considers that it has fully implemented the financing related requirements of 1373 (2001) at both a legislative and operational level. The PSTA and MLPA provide a comprehensive legislative framework for measures aimed at countering terrorist financing and money laundering activity.

At an operational level, since 2002 Samoa has operated a fully functional Financial Intelligence Unit (FIU) that meets current international standards under the auspices of the Money Laundering Prevention Authority.

The FIU has adopted and implemented the system of financial reporting and analysis used by the Australian Transaction Reporting and Analysis Centre (AUSTRAC). The system is internationally acknowledged as a world leader in its field. The FIU staff has worked closely with counterparts in Australia to ensure the system operates effectively. FIU staff has received training assistance from Australia, New Zealand and the Suva based UN money laundering advisor.

The FIU acts as the conduit between the Government and financial sector in identifying persons or entities designated as terrorists by the Security Council under UNSCR 1267. Updated lists of UN designated terrorists are forwarded to the FIU by the Ministry of Foreign Affairs and Trade and these are circulated to financial institutions by the FIU. Notification by institutions that one of their customers is a person or entity on the 1267 list, or suspicion that they are a non-designated terrorist triggers a requirement to freeze transactions under the criminal offence provisions of the PSTA and MLPA. A failure to do so exposes them to criminal liability for the offence of financing, or assisting to finance terrorists. In addition the PSTA and MLPA impose obligations to report suspicious transactions to the FIU.

The FIU is currently being considered for sponsorship, as a member of the Egmont Group, an international body comprised of FIU's. Membership will strengthen Samoa's relationship with other financial intelligence agencies with which its FIU may need to interact for investigative purposes. It will also ensure that FIU staff maintains a high level of understanding on current international good practice on financial intelligence trends and methods.

Subparagraph (a) – What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d)?

Over the last 2-3 years the Government has established a small number of specialist groups to enhance the co-ordination of its campaign against terrorism and organised crime. The most significant of these groups are the FIU, the Transnational Crime Unit (TCU), and the National Border Management Committee (NBMC).

The Transnational Crime Unit (TCU) was established in 2002 to enhance Samoa's ability to process and act upon intelligence information that may be relevant to domestic, regional or international criminal investigations. The unit, comprised of staff seconded from Police, Immigration and Customs is attached to and reports to the Prime Ministers Department and

operates in close collaboration with enforcement agencies that include Police, Customs and the FIU. The unit has become a critical co-ordination point for the Government's strategy to combat terrorism and organised crime. The TCU exchanges intelligence information with the Suva based Pacific Transnational Crime Coordination Centre (PTCCC), a regional intelligence centre. This arrangement ensures that Samoa is fully "plugged in" to the Pacific regions intelligence network. The TCU staff receives regular specialist training in intelligence methods and trends from similar agencies in other countries.

In 2002, the Government established the National Border Management Committee (NBMC). This body acts as a high level forum for consultation and decision making among border and law enforcement/security agencies. A key objective of the NBMC is to ensure that the countries borders are secure and managed effectively.

The NBMC is chaired by the Chief Executive of the Prime Ministers Department and is comprised of senior officials from the following agencies; Immigration, Customs, Police, Justice, the Attorney General, Transnational Crime Unit, Human Quarantine, Plant and Animal Quarantine, Port Authority, Airport Authority, Airlines and shipping, Treasury, and the Public Service Commission. The Body meets regularly to discuss border control issues and to exchange relevant information. Initiatives developed by the NBMC include:

- the establishment of a Maritime Safety Committee, as a sub-committee of the NBMC to oversee the development of security plans for sea ports and ships to implement the requirements under the International Convention on SOLAS and Code for Ship and Port Security;
- the design and implementation of an on-line Border Management System (BMS) accessible to relevant agencies;
- the signing of an Memorandum of Understanding by members of NBMC regarding information exchange and cooperation by those agencies.

Subparagraph (b) - What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

The PSTA contains offences of financing, or assisting to finance terrorists that carry a maximum penalty of up to fifteen (15) years imprisonment. To date no cases have been identified requiring investigation or prosecution for the offences.

Subparagraph (c) – What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

The inter-related PSTA and MLPA provide a mechanism for the freezing of funds or assets suspected of being related to terrorist financing. This supplements other powers held by the

Supreme Court to freeze assets. Authorities have not been required to exercise the powers under the PSTA and MLPA. However, they have successfully applied to the Supreme Court to freeze assets located in Samoa suspected of being related to money laundering under the Court's inherent jurisdiction. It is considered that the combined effect of the PSTA, the MLPA and the Supreme Courts inherent jurisdiction mean Samoa provides comprehensive coverage of the UNSCR 1373 freezing requirements.

Subparagraph (d) – What measures exist to prohibit the activities listed in this subparagraph?

As indicated in reference to subparagraph (b) above, the PSTA makes it a criminal offence, punishable by up to 15 years imprisonment to finance, or assist in financing terrorist acts. To date no cases have been identified requiring an investigation or prosecution for this offence.

Operative Paragraph 2

Recruitment to and participation in terrorist groups

The Government plans to include amendments to the PSTA creating offences relating to recruitment of or participation in terrorist groups in the suite of legislation to be introduced into Parliament in 2006.

Supply of weapons to terrorists

As reported to the Committee in 2002, the *Arms Ordinance 1960* prohibits dealing in arms and ammunition including the importation of arms and ammunition, except where a licence is granted. The possession or carriage of arms, ammunition or explosives is prohibited except for proper and lawful purposes. The Police have powers of search and seizure relating to these items. To date no cases have been identified that have required an investigation or prosecution of persons for these offences in the terrorism context.

Under the *Police Offences Ordinance 1961* it is an offence, punishable by up to 12 months imprisonment to be armed with a dangerous weapon without a lawful purpose.

[The definitions of "arms" and "weapon" in the above Ordinances have remained unchanged since the 1960's. Officials are reviewing whether these terms need to be updated to cover modern weapon technologies that might be used by terrorists].

Subparagraph (b) – What other steps are being taken to prevent the commission of terrorist acts and, in particular, what early warning mechanisms exist to allow exchange of information with other States?

As stated, Samoa is an active member of the Pacific regional intelligence network and has whenever appropriate, passed on information that may be relevant to other countries.

All requests for assistance, regardless of their nature are promptly actioned by Government officials. To date all requests for assistance have been met in a timely manner.

Subparagraph (c) – What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be useful if States supplied examples of any relevant action taken.

It is considered that several factors operate to reduce the risk of terrorists entering Samoa. These include:

- the operation of a comprehensive Border Management System that is fully integrated with relevant intelligence agencies;
- proactive and coordinated intelligence gathering by Samoan Government agencies at a regional and domestic level;
- a high level of awareness by Samoa's border agencies; and
- Samoa's remote geographical location and small number of commercial air links originating from other closely monitored borders, i.e.- Australia, New Zealand and Fiji.

The Border Management System (BMS) has greatly enhanced the ability of Government agencies to screen persons at the border seeking entry into the country. The system contains watch lists that alert agencies to the arrival of "persons of interest" at the border. This system incorporates the Advance Passenger Information (API) system to allow the screening of passengers' data while flights are en route. Under the *Immigration Act 2004* airlines and shipping operators are required to provide authorities with API in accordance with International Civil Aviation Organisation (ICAO) standards.

Under the *Immigration Act 2004* the Minister of Immigration has a broad discretion to deny entry into Samoa or removal of persons considered "undesirable aliens" particularly those who may pose a danger to the peace, order and security of the country. The Minister has exercised this power but on grounds unrelated to terrorist risks.

Subparagraphs (d) – What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

To date no terrorist acts have occurred in Samoa nor have any known terrorists been located in the country.

The *Crimes Ordinance 1961* includes offences such as murder, attempted murder etc. that would cover many acts of terrorism. Penalties include life imprisonment and capital punishment. In addition, the PSTA contains a number of specific offences directed at terrorists. These offences have extraterritorial effect. The legislation also extends criminal liability to secondary parties to offences who aid, abet or assist the commission of offences.

Subparagraph (e) – What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

As stated, the PSTA contains a number of new criminal offences that are directed at terrorist acts including:

- carrying out, attempting, or participating in a terrorist bombing;
- taking, or attempting to take hostages;
- attacking, attempting, or threatening to attack an Internationally Protected Person or their property;
- unlawfully seizing, attempting or threatening to seize an aircraft or ship;
- committing, attempting or threatening acts of violence at an airport;
- financing or assisting to finance terrorist acts

The maximum penalty for the most serious of these offences is life imprisonment. The offences supplement general offences that would also apply to criminal acts carried out by terrorists.

Subparagraph (f) – What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

Samoa operates a comprehensive framework for mutual cooperation in criminal investigations, including extradition of suspected offenders. The *Extradition Act 1974* provides an effective regime for responding to requests for surrender of persons. The MLPA provides agencies and the Attorney General with discretion to provide cooperation to other countries on money laundering investigations. Several requests for assistance are made each year and to date assistance has been provided by Samoa in every case. The Government plans to include amendments relating to extradition and mutual assistance in

the suite of legislation it expects to introduce into Parliament during 2006. These amendments will enhance the efficiency and effectiveness of existing extradition and mutual assistance regimes.

Subparagraph (g) – How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?

The National Border Management System (BMS) provides real time information to border officials on "persons of interest" arriving at the border. The system matches identification details against watch lists supplied by domestic Government agencies and their intelligence partners. Where necessary persons can be stopped and detained at the border. Any persons suspected of being terrorists who were discovered in Samoa could be detained under the powers provided in the PSTA pending prosecution or removed from the country under the *Immigration Act 2004*.

Provisions in the *Permits and Passports Act 1978* and *Crimes Ordinance 1961* make it a criminal offence, punishable by imprisonment to forge, alter, or fraudulently use identification documents or to conspire or attempt those acts.

Officials from the Immigration Division and Ministry of Justice have completed work on procedures for the issuance of identity papers and travel documents. This includes the development of a new computerized index and procedures for the issuance and certification of birth certificates, passports, and certificates of identity. It is considered that these improvements substantially reduce the risk of official documents being used successfully by persons to adopt a false identity.

Operative Paragraph 3

Subparagraph (a) – What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

Samoa continues to be an active participant in regional intelligence networks and to develop its internal intelligence capabilities. This includes the training and secondment of specialist staff, the development and integration of necessary technology systems and a greater degree of coordination between relevant agencies.

Subparagraph (b) – What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

Samoa has a demonstrable record of cooperation on administrative and judicial matters. Proposed legislative amendments that the Government expects to introduce into Parliament during 2006 will further enhance the effectiveness of mutual cooperation in this area.

Subparagraph (c) – What steps have been taken to cooperate in the areas indicated in this subparagraph?

In addition to the continuing development of more robust border controls is a comprehensive legislative framework to prevent and suppress terrorist attacks and to take action against perpetrators.

Subparagraph (d) – What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Samoa is party to eight of the twelve international treaties against terrorism. These are:

- 1963 Convention on Offences and Certain Other Acts Committed on board Aircraft (Tokyo Convention);
- 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention);
- 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention);
- 1979 Convention on the Physical Protection of Nuclear Material (Nuclear Material Convention);
- 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Violence at Airports Protocol);
- 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Maritime Safety Convention);
- 1991 Convention on the Marking of Plastic Explosives for the purpose of Detection (Plastic Explosives Convention);
- 1999 International Convention for the Suppression of the Financing of Terrorism (Financing of Terrorism Convention)

The government is considering accession to the remaining four treaties relative to other domestic and international priorities. These are:

- 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (Internationally Protected Persons Convention);
- 1979 International Convention Against the Taking of Hostages (Hostages Convention);
- 1997 International Convention for the Suppression of Terrorist Bombings (Terrorist Bombings Convention);
- 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention)

The Government notes that the PSTA already contains offences that implement requirements of the Internationally Protected Persons Convention and the Hostages Convention.

Subparagraph (e) – Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

See subparagraph (d) above. Samoa has signed and ratified the Convention for the Suppression of the Financing of Terrorism (9 December 1999) and incorporated its requirements into domestic law.

Subparagraph (f) – What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.

To date there have been no cases where persons entering the country have claimed refugee status. The government considers the risk of this occurring low because of Samoa's remote location, the small number of commercial air services, and high level of border controls that are applied in the countries from which these services originate.

The Border Management System (BMS) has greatly enhanced the ability of Samoan Government agencies to screen persons at the border seeking entry into the country. The system contains watch lists that alert agencies to the arrival of "persons of interest" at the border and incorporates Advance Passenger Information (API) capability.

The implementation of BMS in conjunction with more proactive and coordinated intelligence gathering by Samoan Government agencies at a regional and domestic region operate to reduce the risk of terrorists entering Samoa.

In addition, the *Immigration Act 2004* provides the Minister of Immigration with the power to deny entry into Samoa to persons considered "undesirable aliens" particularly those who may pose a danger to the peace, order and security of the country. The Minister has

exercised this power. Although this has been on grounds unrelated to terrorist risks there is nothing to prevent its use in such circumstances.

Subparagraph (g) – What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognised as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

While the risk of terrorists claiming refugee status in Samoa is considered low, mechanisms do exist that permit authorities to make appropriate inquiries to confirm the bona fides of the claimant. In addition, where its is considered that claimants present a risk to Samoa's security the Minister of Immigration would be able to exercise the power described above to deny persons entry under the *Immigration Act* 2004 as an *" undesirable alien "*.

The Extradition Act 1974 governs requests for extradition of persons from Samoa. In addition, the PSTA (Section 6) provides specifically for the extradition of persons from Samoa sought by other countries on charges related to terrorist acts. Under the Extradition Act requests for surrender may be received from Commonwealth countries designated by Samoa's Head of State or countries with which Samoa has extradition treaties.

The general restrictions on surrender contained in Section 6 of the Act include belief that the offences for which the person is sought are political in character or that requests for surrender are politically motivated.

Amendments aimed at ensuring the effectiveness of the Extradition Act will be included in the package of legislation to be introduced into Parliament by the Government in 2006. In the meantime, the provisions of the Immigration Act related to "undesirable aliens" can be used to remove suspected terrorists from Samoa.

Operative paragraph 4

Samoa is not a signatory to the United Nations Convention Against Transnational Organised Crime and related Protocols relating to the Smuggling of Migrants and Trafficking in Persons. The government is considering whether to adopt the Convention and Protocols relative to other international and domestic priorities. Factors relevant to the timing of possible adoption include the ability, in a timely manner, to draft any necessary changes to Samoa's domestic law and to implement any changes to operational practice. The Government would welcome any technical assistance that might be available in these areas.

The government considers that there is a low risk that acts of migrant smuggling or people trafficking would occur in Samoa given its relatively remote location, small number of

commercial air services and the high level of border controls in the countries from which flights emanate. Similar considerations apply to sea bound criminal activity of this sort. In so far as situations occur in Samoa that involve persons being detained against their will or in circumstances involving coercion or duress these would be covered by the offence of kidnapping in the *Crimes Ordinance 1961*. The maximum penalty for the offence is 15 years imprisonment.

The Ordinance also makes it an offence to conspire or attempt to commit the substantive offence and extends liability to secondary parties as well as principal offenders.

Conclusion

Samoa is committed to meeting all of its obligations under UNSCR 1373 (2001) and to support and contribute, to the greatest extent possible, the ongoing international campaign against terrorism and associated criminal activity. The government of Samoa considers that the package of legislative amendments to be introduced into Parliament during 2006, combined with the continued development of robust operational mechanisms will ensure the implementation of all relevant UN Security Council requirements.